

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DONALD CALHOUN,	§	
	§	
Plaintiff/Counter-Defendant	§	
	§	
v.	§	HON. GEORGE C. HANKS, JR.
	§	CIVIL ACTION NO. 4:19-cv-03171
	§	
JACK DOHENY COMPANIES, INC.	§	JURY DEMANDED
	§	
Defendant/Counter-Plaintiff	§	ORAL ARGUMENT REQUESTED

COUNTER-PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

Defendant/Counter-Plaintiff Jack Doheny Companies, Inc. (“JDC”), through counsel, now moves pursuant to Fed. R. Civ. P. 65 to respectfully request that this Honorable Court enter a preliminary injunction against Plaintiff/Counter-Defendant Donald Calhoun (“Calhoun”), stating as follows:

1. As set forth in JDC’s incorporated brief in support, JDC seeks enforcement of the non-compete agreement that Calhoun executed in connection with his highly-compensated employment with JDC.

2. Substantial evidence demonstrates that, immediately after Calhoun unilaterally resigned from JDC, Calhoun 1) joined Custom Truck One Source, a direct JDC competitor; and 2) directly solicited JDC’s customers in violation of his non-compete agreement.

3. Indeed, one of JDC’s customers executed a contract with Custom Truck One Source after Calhoun’s successful solicitation.

4. Calhoun's solicitation of JDC's customers imminently threatens the loss of JDC's customers and irreparable damage to JDC's goodwill with its customers, including ROC.

5. Both Texas state courts and this Circuit recognize that "[l]oss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction." *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex. App. 2005); *Spiegel v. City of Houston*, 636 F.2d 997, 1001 (5th Cir. 1981) (noting that preliminary injunction is appropriate where a threat existed that movant's patrons were being "discouraged" from doing business with movant).

6. On September 5, 2019, undersigned counsel requested opposing counsel to stipulate to the preliminary injunction requested herein; on September 6, 2019, opposing counsel refused to do so, and instead advised that his client opposed the relief requested herein.

7. Thus, without an interim injunction, Calhoun will continue to solicit JDC customers and continue to impose irreparable harm on JDC.

ACCORDINGLY, Defendant/Counter-Plaintiff Jack Doheny Companies, Inc. respectfully requests this Honorable Court to enter the proposed Preliminary Injunction attached hereto as **Exhibit 1**, including the following relief:

A. Pending resolution of this matter, Plaintiff/Counter-Defendant Donald Calhoun is enjoined from being employed with, or providing services to, any individual, company, or entity that sells, rents, or repairs new, used, and remanufactured industrial

utility vehicles, including, but not limited to, street sweepers, petroleum, waste hauling, hydro-excavating, sewer trucks, and other specialty commercial vehicles and all related parts and services within North America, including, without limitation, Custom Truck One Source.

B. Pending resolution of this matter, Plaintiff/Counter-Defendant Donald Calhoun is enjoined from directly or indirectly attempting to persuade, entice, induce, or otherwise cause any customer of Jack Doheny Companies, Inc. to reduce the amount of business those customers do with Jack Doheny Companies, Inc.; and

C. Any other relief the Court deems proper.

Respectfully submitted,

King & Jurgens, L.L.C.

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**ATTORNEYS FOR DEFENDANT,
JACK DOHENY COMPANIES, INC.**

CERTIFICATE OF CONFERENCE

I certify that on the 5th of September, 2019, I contacted and conferred with counsel for Plaintiff/Counter-Defendant, Donald Calhoun, regarding the relief requested in this Motion, who on the 6th day of September, 2019 indicated that the Plaintiff/Counter-Defendant is opposed to the relief sought herein.

/s/ Robert J. Stefani

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was filed of record by utilizing the CM/ECF electronic filing system and the below listed counsel are a registrant of this e-filing system and a true and correct copy of same will be served on counsel for Plaintiff in accordance with Rule 5(b) of the Federal Rules of Civil Procedure this 9th day of September, 2019:

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